

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II**

CP (IB) 3657/MB/C-II/2018

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Yaduka Financial Services Limited
[CIN: U51109WB2007PLC117012]
...Financial Creditor

Versus

Monotype India Limited
[CIN: L72900MH1974PLC287552]
...Corporate Debtor

Order Delivered on 18.02.2020

Coram:

Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

For the Financial Creditor : Ms Neha Mehta, Advocate
For the Corporate Debtor : None Present

ORDER

***Per: Mr. Ravikumar Duraisamy, Member (Technical) and
Mr. Rajasekhar V. K, Member (Judicial)***

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Yaduka Financial Services Limited ("the Financial Creditor"), seeking to initiate Corporate

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Insolvency Resolution Process (CIRP) against Monotype India Limited ("the Corporate Debtor").

2. The Corporate Debtor is a Private company limited by shares and incorporated on 30.09.1974 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Office No. 602, 6th Floor, Raheja Chambers, 213 Nariman Point, Mumbai MH 400021, therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 25.09.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 12,17,43,290/- (Rupees Twelve crore seventeen lakh forty-three thousand two hundred and ninety only). The date of default is stated to be 26.03.2018.
4. The Corporate Debtor approached the Financial Creditor with a request for a loan of sum of Rs. 10 Crore and to pay interest @ 15% per annum along with the penal interest of 2% per annum as per the terms and conditions. The ICD (Inter Corporate Deposit), the loan should be repaid on 26.03.2018.

The said sum of Rs.10 Crore was disbursed on 22.03.2017, 23.03.2017, 24.03.2017. The Financial Creditor extended the loan of Rs 10 Crore by way of RTGS and the Corporate Debtor acknowledged the payment of sum of Rs.10 Crore by 22.03.2017, 23.03.2017 & 24.03.2017. The ICD is dated 31.03.2017. The Corporate Debtor executed a letter dated 31.03.2017

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acknowledging the receipt of the said sum of Rs.10 Crore and forwarded a cheque bearing No. 139520 for sum of Rs.10 Crore drawn on Axis Bank, Mumbai.

Further, the Corporate Debtor also executed a Demand Promissory Note dated 31.03.2017 and unconditionally admitted and undertaken to repay the sum of Rs.10 Crore, with interest thereon, on demand. Interest at the rate of 15% per annum was payable quarterly on the amount borrowed along with penal interest at the rate of 2 % per annum on the sum in default of the payment of the loan amount. The Corporate Debtor through its director also executed a letter of continuing guarantee thereby admitting and acknowledging to repay said amount jointly to the Financial Creditor. The Corporate Debtor also deducted Tax at source of Rs.32,055/- (Rupees thirty-two thousand fifty-five only) on the interest payable to the Financial Creditor and credited Rs.3,20,548/- (Rupees three lakh twenty thousand five hundred and forty-eight only) as on 31.03.2017 to the Financial Creditor. The Corporate Debtor however failed and neglected to repay the loan amount or any part thereof, any interest thereon on the due date or even thereafter in view of the default committed by the Corporate Debtor, the Financial Creditor presented the said cheque dated 23.04.2018 drawn on Axis Bank for encashment, however, the said cheque was returned for 'insufficient funds', therefore, the Financial Creditor issued a Demand Notice u/s 138(b) of the Negotiable Instruments Act calling upon the

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Corporate Debtor to make payment of the said sum within 15 days from the date of receipt of notice. Despite receipt of the said demand notice and on expiry of period of 15 days, the Corporate Debtor failed and neglected to pay the sum of Rs.10 Crore to Financial Creditor.

In view of the non-payment of the dues and interest, a sum of Rs.12,17,43,290/-(Rupees Twelve crore seventeen lakh forty-three thousand two hundred ninety only) has become due and payable by the Corporate Debtor as on 16.08.2018. Further the Corporate Debtor also issued statement of confirmation of accounts acknowledging the dues payable by the Corporate Debtor to the Financial Creditor for the transactions during the period of 01.04.2016 to 31.03.2017. As per the confirmation of accounts, the Corporate Debtor admitted and acknowledged for sum of Rs.10,02,88,493/- (Rupees ten crore two lakh eighty-eight thousand four hundred ninety-three only) as due and payable as on 01.04.2017 and the same amount is also shown in the balance sheet for the year ending 31.03.2017 as short-term borrowing.

From the records it is noted by the Bench that the Learned Counsel for the Corporate Debtor appeared during the hearing held on 08.02.2019, 09.04.2019, 25.06.2019, 13.08.2019, 29.08.2019; however surprisingly no reply has been filed.

Since, no reply has been received from the Corporate Debtor and no defence is from the Corporate Debtor side, it is

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presumed that the Corporate Debtor had no dispute with regard to the Debt and has no objection for the initiation of CIRP, therefore, the process of CIRP can be initiated.

5. The Financial Creditor has proposed the name of **Mr Fanendra Munot**, Registration No. IBBI/IPA-001/IP/P-0515/2017-2018/10916, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
6. Upon perusal of the documents, this Bench is satisfied that it is a fit case for “Admission” as the application is complete in all respects as prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Therefore, the Bench Admits the petition filed by the Financial Creditor Yaduka Financial Services Ltd against the Corporate Debtor Monotype India Ltd.
7. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In

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view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

8. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) 3657/MB/C-II/2018** filed by **Yaduka Financial Services Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Monotype India Limited [CIN: L72900MH1974PLC287552]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its

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property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation

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6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mr Fanendra Munot**, Registration No. IBBI/IPA-001/IP/P-0515/2017-2018/10916, having address at 6th Floor, Mafatlal House Building, H T Parekh Marg, Backbay Reclamation, Mumbai- 400020 [email: fhmunot@gmail.com], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be in compliance with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These

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expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The IRP/RP is directed to submit periodical report as prescribed in the Code/Rules/Regulations.
- (j) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

18.02.2020

Sd/-

RAJASEKHAR V.K
Member (Judicial)